Supreme Court, U.S.
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No. 77-810

In the Supreme Court of the United States

OCTOBER TERM, 1977

EDWARD L. FORD, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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As petitioner acknowledges (Pet. 10), the petition for a writ of certiorari in this civil tax case was filed out of time. The judgment of the court of appeals was entered on October 21, 1976 (Pet. App. 14a). The time for seeking certiorari therefore expired on January 19, 1977. On March 11, 1977, petitioner filed a motion for leave to file an untimely petition for rehearing, which was denied on March 14, 1977 (Pet. 5). The petition for a writ of certiorari, accompanied by a motion for leave to file, was filed on December 5, 1977, almost one year beyond the 90-day time limit established by 28 U.S.C. 2101(c).

Contrary to petitioner's assertions (Pet. 10-13), this Court has consistently held that the time limits established under 28 U.S.C. 2101(c) and its statutory predecessors for filing petitions for writs of certiorari in civil cases are

jurisdictional. See, *e.g.*, *Dept. of Banking* v. *Pink*, 317 U.S. 264, 268; *Toledo Co.* v. *Computing Co.*, 261 U.S. 399, 417-418; *Federal Trade Commission* v. *Minneapolis-Honeywell Co.*, 344 U.S. 206, 207; See generally Stern and Gressman, *Supreme Court Practice*, Sec. 6.1, p. 242 (4th ed. 1969).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

JANUARY 1978.